



DOGM Regulation: Small Mine NOI

Board of Oil, Gas and Mining Proceedings and Orders in re: Tree Farm NOI

OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL

Administrative Rules and General Oversight

June 16, 2022



Parties & Terms

- **Parties**

- **Tree Farm LLC: mining operator**
- **Board: Board of Oil, Gas and Mining**
 - Policy making and appeal authority for Division
- **Division: Division of Oil, Gas, and Mining**
 - Approves NOI

- **Terms**

- **NOI: Notice of Intention**
 - Filed by mine operator with Division to operate small or large mining operations
- **Small mining operations: mining operations that disturb or will disturb:**
 - 20 or less surface acres at any given time in an unincorporated area of a county
 - 10 or less surface areas at any given time in an incorporated area of a county.

Issues in DOGM/Tree Farm Proceeding

- Procedural
- Statutory and Rule Construction





Procedural Question

- **Was it proper for the DOGM Board to provide statutory interpretation and guidance on a small mine NOI when reviewing and granting the Stipulation Motion that did not include a pending small mine NOI?**



Tree Farm NOI Proceeding Timeline

- **Nov. 12, 2021: Tree Farm files with Division**
 - NOI to Commence Small Mining Operation
 - NOI to Commence Large Mining Operations
- **Dec. 7, 2021: Division **denies NOI for small mining**, but agrees to review large mining NOI**
- **Dec. 10, 2021: Tree Farm files Request for Agency Action with Board to review the Division's denial of the small mining NOI**
- **Feb. 24, 2022: Board issues Supplemental Briefing Order to Tree Farm and Division**
- **March 16, 2022: Division and Tree Farm file Stipulation Motion**
 - Stipulation agrees that Tree Farm **will not contest Division's denial of small mine NOI, will withdraw large NOI, and refile a small mine NOI**. Parties also agree that Tree Farm's Request for Agency Action is moot.
- **March 17, 2022: Division files Motion for Policy Guidance with Board**
 - Request future policy guidance on small mining NOI and makes legislative suggestions
- **May 23, 2022: Board issues Order**
 - Grants Tree Farm's and Division's Stipulated Motion to Dismiss **"with any evaluation of a re-submitted small mine NOI from Tree Farm be performed consistent with this opinion."**
 - **Although a small mining NOI is not before the Board, the Order interprets UCA 40-8-7 and 40-8-13 for purposes of approving a small mining NOI; Board determines that the Division's authority is more than "ministerial" and goes beyond approving form and surety of NOI.**
 - Denies the Division's Motion for Policy Guidance



Statutory & Rule Construction Question

- **When the Division reviews a small mine NOI:**
 - does the Division review the NOI only to decide if the NOI meets form and amount of surety requirements

OR

- may the Division review other considerations (health, safety, compliance with external agency regulations (e.g. Div. of Air Quality)) before approving?



Small Mine NOI Statutes

- **40-8-13 Notice of intention**

(5) Except for the form and amount of surety, an approval of a notice of intention for small mining operations is not required.

- **40-8-4 Definitions**

(3) (a) "Approved notice of intention" means a formally filed notice of intention to commence mining operations, including revisions to the notice of intention that is approved under Section 40-8-13.

(b) An approved notice of intention is not required for small mining operations.



Small Mine NOI Rules

- R647-3-101

1. Prior to commencement of operations, a Notice of Intention to Commence Small Mining Operations (FORM MR-SMO) containing all the required information must be filed with and determined complete by the Division and the Division shall have approved the form and amount of reclamation surety. It is recommended that the notice of intention be filed with the Division at least thirty (30) days prior to the planned commencement of operations.

2. Within 15 days after receipt of a Notice of Intention, the Division will review the proposal and notify the operator in writing;

2.11. That the notice of intention is complete and all required information has been submitted; or,

2.12. That the notice of intention is incomplete, and additional information as identified by the Division will be required.

3. The Division will review and approve or disapprove:

3.11. The form and amount of reclamation surety (R647-3-111), and

3.12. All variances requested from Rules R647-3-107, 108, and 109, regardless of the number of surface acres of disturbance planned.



Board Authority Statutes

- **40-6-4 Board of Oil, Gas, and Mining created -- Functions**

(1)(b) The board shall be the policy making body for the Division of Oil, Gas, and Mining.

- **40-8-6 Board – Powers, functions, and duties.**

In addition to those provided in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining, the board has the following powers, functions, and duties:

(1) To enact rules according to the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are reasonably necessary to carry out the purposes of this chapter.

(2) To hold hearings and to issue orders or other appropriate instruments based upon the results of those hearings.

(3) To issue emergency orders according to the requirements and provisions of Title 63G, Chapter 4, Administrative Procedures Act.

(4) To do all other things and take such other actions within the purposes of this act as may be necessary to enforce its provisions.



Board & Division Authority Statutes

- **40-8-7 Board and division -- Authority**

(1) The board and the division may require:

- (a) that a notice of intention for all mining operations be filed with, and approved by, the division, before the mining operation commences or continues pursuant to Sections 40-8-13 and 40-8-23;**
- (b) the reclamation of lands affected by mining operations after the effective date of this chapter having due regard for innate differences in mineral deposits;**
- (c) for mining operations, including small mining operations, the furnishing and maintenance of reasonable surety to guarantee that the land affected is reclaimed according to approved plans consistent with on-site conditions;**
- (d) that the operator rehabilitate, close, or mitigate the impacts of each drill hole, shaft, or tunnel as required under Section 40-8-13;**
- (e) that the operator pay legally determined public liability and property damage claims resulting from mining operations;**
- (f) that every operator who conducts mining operations in the state maintain suitable records and make periodic reports to the division as required under this chapter;**
- (g) that with respect to all mining operations, a notice of intention is filed with and, if required by this chapter, approved by the division before any such mining operations are commenced or continued pursuant to Section 40-8-23;**
- (h) the suspension of mining operations in an emergency situation;**
- (i) the payment of fixed, uniform, and nonescalating permit fees; or**
- (j) that mining operations be conducted to minimize or prevent hazards to public health and safety.**



Statutory & Rule Construction Question

- **When the Division reviews a small mine NOI:**
 - does the Division review the NOI only to decide if the NOI meets form and amount of surety requirements [UCA 40-8-13]

OR

- may the Division review other considerations (health, safety, compliance with regulations of external agency regulations (e.g. Div. of Air Quality)) before approving? [UCA 40-8-7]



DOGM Board Order

- **“Historically, most small mine operations in Utah were conducted in remote and rural areas with minimum interface with denser and more populated areas. Accordingly, these small mines were well suited to fall within a streamlined permitting process.” p. 9**
- **“The Board disagrees that the Division’s interface with small mine NOIs is narrow and limited if the situation demands additional regulatory oversight. Based on the proximity of Tree Farm’s proposed mining operations to the citizens of Salt Lake City, the additional protections contemplated by UCA 40-8-7(1)(j) are likely warranted.” p. 11**
- **“...[T]he Board interprets [UCA 40-8-7] as requiring the approval of any permit that may be required from sister regulatory agencies to be of record prior to commencement of mining operations.” p. 11**



Questions?

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